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Panel on Manpower

**Background brief prepared by
the Legislative Council Secretariat for the meeting on 18 July 2017**

Review of statutory maternity leave

Purpose

This paper sets out background information on the provision of statutory maternity leave ("ML") in Hong Kong and summarizes the past discussions by the Panel on Manpower ("the Panel") on the subject.

Background

2. Under the Employment Ordinance (Cap. 57) ("EO"), a female employee employed under a continuous contract¹ for not less than 40 weeks immediately before the commencement of her ML and having given notice of pregnancy and her intention to take ML to the employer is entitled to a continuous period of 10 weeks' ML with ML pay at the rate of four-fifths of the employee's wages. The employee may also be granted an additional period of leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement. An employer who fails to grant ML to a pregnant employee or fails to pay ML pay to an eligible pregnant employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

¹ An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

Deliberations of the Panel

Duration and pay of statutory ML

3. Given that the existing provisions on maternity protection under EO had been in force since 1995, most members considered that the provisions were outdated and could not meet the present needs of employees. To comply with the international standards, some members took the view that the duration of statutory ML should be increased from 10 weeks to at least 14 weeks with full pay to promote childbirth and breastfeeding.

4. The Administration advised that the maternity provisions in EO, including those on the duration and the taking of ML, had struck a reasonable balance between employees' interests and employers' affordability, having regard to the fact that the responsibility of paying relevant maternity benefits were solely borne by employers. Moreover, with the agreement of the employer, the employee could take further leave and, in such situation, the continuity of her employment would not be affected. The Administration considered that the existing provisions had accorded comprehensive protection for pregnant employees in the aspects of health, employment protection, ML and ML pay.

5. The Administration further advised that apart from safeguarding employee's rights and benefits through legislative means, employers were encouraged, having regard to individual circumstances of their enterprises, to adopt family friendly employment practices for their employees. For instance, through launching of the "Award for Breastfeeding Support" under the biennial "Family-Friendly Employers Award Scheme" by the Family Council and the Home Affairs Bureau, companies/organizations were encouraged to adopt a breastfeeding-friendly workplace policy for their lactating employees. According to the Administration, given the improved socio-economic conditions and the tight manpower situation in Hong Kong, it was noticed that there was an increasing number of employers who were willing to offer employment conditions, including maternity benefits, that were more favourable than those provided under EO.

Timetable for review of statutory maternity leave

6. Some members expressed disappointment at the little progress in enhancing maternity protection over the years. These members considered that the Administration should play an active role in improving the maternity benefits, given that employers and employees could hardly reach a consensus on

the matter. They urged the Administration to draw up a concrete timetable for and accord priority to the deliberation on the review of maternity benefits by the Labour Advisory Board ("LAB").

7. The Administration advised that in assessing whether to further improve maternity benefits for pregnant employees, it had to take into consideration Hong Kong's socio-economic situation and whether there was a consensus in the community. The Administration would from time to time keep the relevant provisions under review and give careful consideration to improving employee's rights and benefits progressively. Notably, paid ML was first introduced in 1981, whereby a pregnant employee who had been employed under a continuous contract for not less than 40 weeks immediately before the commencement of ML would be entitled to ML pay at the rate of two-thirds of her wages. In 1995, the rate of ML pay was raised to four-fifths of the employee's wages. In 1997, the 26-week qualifying period of service for ML was removed so that any pregnant employee who had been employed under a continuous contract of employment was entitled to ML and the maternity protection coming along with ML. Members were assured that the views on according a higher priority to deliberating the subject of maternity benefits would be relayed to LAB for consideration if and when maternity benefits under EO would be reviewed.

Protection against pregnancy discrimination

8. Some members expressed concern about discrimination against female employees who returned to work after expiry of ML. These members noted with concern that many female employees encountered difficulties in taking leave to take care of their newborns or faced unfavourable treatment in respect of job assignment and career advancement. These members considered that the employment protection period for pregnant employees should be extended to a specified period beyond the expiry of ML.

9. According to the Administration, EO prohibited an employer from dismissing an employee during her pregnancy or ML. Besides, if an employee had been unreasonably and unlawfully dismissed, she might seek remedies, including compensation or reinstatement/re-engagement in the Labour Tribunal. Apart from maternity protection under EO, the Sex Discrimination Ordinance (Cap. 480) also played an important role in protecting women from pregnancy discrimination in various areas including employment. Employees, who were discriminated because of pregnancy or dismissed after giving birth, could lodge a complaint with the Equal Opportunities Commission ("EOC"). EOC would provide assistance to complainants to seek redress as appropriate. In the view

of the Administration, the suggestion of extending the employment protection period beyond the expiry of ML should be considered carefully in a wider context, having regard to its read-across implications on other provisions in EO such as sick leave.

Relevant papers

10. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant papers on statutory maternity leave

Committee	Date of meeting	Paper
Legislative Council	9 April 2014	Official Record of Proceedings (Question 16)
Legislative Council	26 November 2014	Official Record of Proceedings (Question 3)
Panel on Manpower	17 May 2016 (Item V)	Agenda Minutes
Legislative Council	18 May 2016	Official Record of Proceedings (Question 17)
Legislative Council	14 December 2016	Official Record of Proceedings (Question 16)
Panel on Manpower	18 April 2017 (Item IV)	Agenda Minutes FS07/16-17

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